

Secretary of State for Wales
Wales Office
Gwydr House
Whitehall

23 September 2016

Dear Alun

The Wales Bill – Economy Infrastructure & Skills Remit

The Economy, Infrastructure and Skills Committee discussed the Wales Bill at our meeting on 21 September 2016.

We would be grateful if you could clarify certain areas of the Bill highlighted in the Annex to this letter. Specifically, where we have identified areas in which we are concerned that the Assembly's competence is reduced, I would appreciate it if you could confirm this assessment and offer an explanation as to how the scope reservations was decided. Indeed, it may be helpful to insert in to the Bill a clause confirming that the new settlement is not intended to reduce the range or scope of powers devolved to Wales.

I would be grateful for a response in order to inform the considerations of the Assembly's Constitutional and Legislative Affairs Committee.

Yours sincerely,



Russell George

Chair



Annex

In November 2015, the former Enterprise and Business Committee of the National Assembly for Wales sought clarification on the reservations and specific areas of the draft Wales Bill that applied to the subjects remit of the Committee.

Like the former 4th Assembly Committee, this Committee also welcomes the additional increase of powers for transport both in terms of the Assembly's ability to legislate and the increase of executive powers of the Welsh Ministers in specific fields. Also, previous reservations listed in the draft Wales Bill that have been removed in the Bill, as laid concerning:

- in relation to advertising, regulation specifically in relation to tobacco and tobacco products
- traffic signs in general
- marine and waterway transport

Also, that an exception to a reservation has been added (i.e. an area which the Assembly can legislate) in respect of the subject-matter of the Fire and Rescue Services Act 2004 that mirrors competence in the current settlement.

However, in large proportion, the same issues that were identified as areas of concern with particular reservations in the draft Wales Bills and set out below in the work of this Committee, continue to apply in the Wales Bill, as introduced. The Economy Infrastructure and Skills Committee therefore, continue to fully endorse the previous concerns of the former Enterprise and Business Committee in relation to the following reservations of the Bill that fall within the remit of the work of this Committee and that could impact on the Assembly's competence if the Bill comes into force, as currently drafted.

Reference to '*Schedule 7 GOWA*' below is reference to the current settlement under Schedule 7 of the Government of Wales Act 2006.

Reference to '*new settlement*' is reference to the Schedule 7A to the Government of Wales Act in the Wales Bill.



1.0 The following set out the Committee's view concerning specific reservations under **Schedule 7A – Head C – Trade and Industry**.

1.1 Section C6 Consumer protection

1.2 The current exception in Schedule 7' GOWA prevents the Assembly from legislating about *'consumer protection, including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indication.....'*

1.3 The new settlement includes a more detailed description of what the reservation 'consumer protection' includes. For example, in **reservation 70** the additional words 'supply of services to consumers' are included in the new settlement which do not appear in the current exception in relation to consumer protection Schedule 7, GOWA. The wording of this reservation is therefore, narrower.

The Committee is concerned that it is still not clear whether the supply of services to consumers applies only within the context of the Sale of Goods Act 1979 or is it intended to apply further across different types of services to consumers more generally, e.g. bus services etc.

1.4 Further, the new settlement includes the wording *'safety of, and liability for, services supplied to consumers'* in reservation 71. This wording is also not currently contained in Schedule 7, GOWA and is therefore, **a reduction of the Assembly's competence.**

The Committee is concerned that the Assembly's competence is reduced in relation to reservation 71.

1.5 In relation to reservation 72 and reference to 'estate agents', as the Assembly is currently able to legislate on the 'promotion of business and competitiveness' and 'estate agents' are not specifically referred to as an exception in Schedule 7 this reservation therefore, **potentially reduces the Assembly's competence in relation to 'estate agents'.**



The Committee appreciates the clarity provided in the Explanatory Notes that confirms that letting agents are a devolved responsibility but is concerned that the regulation of estate agents listed in reservation 72 is a potential reduction of competence.

- 1.6 The following wording in reservation 76 is not clear and the Explanatory Notes to the Bill do not provide any further detail – *‘the national accreditation body and the accreditation of bodies which certify or assess conformity to technical standards in relation to products or environmental management systems.’*

The Committee’s view is that it is unclear as to whether reservation 76 represents a reduction in competence.

2.0 Section C12 Assisted areas and limits on financial assistance to industry

- 2.1 Reservation 87 limits the Assembly’s competence in relation to:

Section 1 and Section 8(5) (7) of the Industrial Development Act 1982 (‘the 1982’ Act)

- 2.2 Section 1 allows the Secretary of State by Order to specify any areas of Great Britain as a development area or intermediate area. Further, Section 8 allows the Welsh Ministers to provide financial assistance for industry. Para 195 of the Explanatory notes says that, ‘the reservation on the financial limits means that financial assistance to the industry under section 8 of the Industrial Development Act 1982 by Welsh Ministers, Scottish Ministers and UK Ministers combined cannot exceed total expenditure thresholds which are set by UK Ministers’.
- 2.3 While executive powers are retained for the Welsh Ministers under Section 8 of the 1982 Act, the inclusion of the subject matter of the 1982 Act potentially **narrows the Assembly’s ability to legislate under** the current wording of Schedule 7 of GOWA and general heading ‘economic regeneration and development’.



The Committee is concerned that the Assembly's competence is reduced in relation to reservation 87.

3.0 The following sets out the Committee's view concerning specific reservations under Schedule 7A – Head E– Transport.

3.1 Section E1 Road transport

3.2 Reservation 104, concerns driver licensing and includes (training, testing and certification) whereas under Schedule 7, GOWA '06 it is only referred to as 'driver licensing'.

3.3 The wording therefore, is narrower under the new settlement and the inclusion of the word 'training' could impact on the Assembly's ability to legislate in relation to the promotion of road safety.

The Committee is concerned that reservation 104 represents a reduction in the Assembly's competence given that the Assembly in the current settlement is able to legislate in relation to the promotion of road safety.

4.0 Section E2 Rail transport

4.1 The current exception under Schedule 7 GOWA, refers to 'provision and regulation of railway services' whereas under the new settlement, reservation 123 only states '*railway services*'.

4.2 The interpretation provision under E2 defines 'railway services' more specifically by reference to section 82 of the Railways Act 1993. This includes:

- *services in relation to the carriage of passengers, luggage, parcels mail and goods and services in relation to stations,*
- *maintenance facilities and*
- *the provision and operation of the rail network itself*

The definition of 'railway services' is more restrictive than the current settlement and the Committee is concerned by the potential reduction in competence in relation to reservation 115.



4.3 Section E6: other matters

- 4.4 The current exception in Schedule 7 refers to ‘technical specification for fuel in use of internal combustion engines’ whereas the new settlement under reservation 126 refers to the same issue:

‘technical specifications for fuel or other energy sources or processes for use in road, rail, marine waterway or air transport’

- 4.5 The wording under the new settlement is more restrictive and encapsulates other wider forms of transport, and means of propulsion other than internal combustion engines, so is therefore, a **reduction** in competence.

The Committee is concerned that reservation 126 reduces the Assembly’s competence.

5.0 Bus Regulation

The potential for the regulation of buses in Wales is an area which the previous Committee and the Welsh Government has said it requires further powers. The following example was also provided to this Committee illustrating how Bus Regulation might be viewed in terms of Assembly competence in the new settlement.

- 5.1 Example: *Under the new settlement, there is now scope for the Assembly to legislate concerning local bus registration. Aside from these, Department for Transport told the E&B Committee in September 2015 that it believed that the Assembly / Welsh Ministers already had powers to regulate buses.*
- 5.2 *There are also currently limited executive powers for the Welsh Ministers/ local authorities to co-ordinate bus operations under current legislation, these are set out in the Transport Act and Local Transport Act 2008, and include Voluntary and Statutory Partnerships and Statutory Quality Contracts.*
- 5.3 *Both the above-mentioned levers in theory should allow for the regulation of buses in Wales. However, there is a caveat to this. This because some of*



the associated benefits of regulation include the possibility of capping and regulating fares and integrated ticketing. It is not clear whether issues such as these would be caught by the following reservations:

C3: Competition: reservation 67 ‘Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers’.

C6: Consumer protection: reservation 70 ‘Regulation of the sale and supply of..... services to consumers’

The Committee is concerned that issues such as fares and integrated ticketing would be caught by the above mentioned reservations should, such an option be pursued in Wales.

6.0 The following sets out the Committee’s view concerning specific reservations under Schedule 7A – Head H – Employment.

6.1 Section H1 – Employment and industrial relations

6.2 Currently, the Assembly can legislate on ‘silent subjects’ i.e. (it is neither a devolved subject, nor an exception under Schedule 7) provided it is related to a ‘conferred subject’ under Schedule 7 of GOWA and the current settlement.

6.3 This was confirmed in the Supreme Court decision in light of the Agricultural Sector (Wales) Act 2014 where the Act was within competence despite it both relating to a devolved subject ‘agriculture’ and a silent subject ‘employment’.

6.4 In the new settlement a silent subject ‘employment’ has become a specific reservation under Head H *‘Employment rights and duties and industrial relations including the subject of.....’* [and reference to a list of specific Employment legislation].



6.5 Further, a specific exception has been made to this Reservation which excludes *‘the subject-matter of the Agricultural Sector (Wales) Act 2014’* and protects the subject-matter of this Act.

6.6 Including ‘employment’ as a reservation in the current settlement in combination with the new legislative tests is a **significant reduction** in the Assembly’s competence in the context of employment.

6.7 There is also another Head under the new settlement – ‘the professions’ that includes not legislating on health professionals which seems a broader reservation than the current exception in Schedule 7, GOWA.

6.8 The Committee was provided with the following example of how might a proposed Bill in the new settlement be considered:

- *Proposed future Bill that is seeking to legislate on wages, conditions and training in social care sector – similar to Agricultural Sector (Wales) Act 2014.*
- *Under present settlement in light of Supreme Court decision on 2014 Act – Bill concerning social care sector would be within competence.*
- *Proposed reservation of ‘employment rights and duties and industrial relations’ under Head H, Section H1 of Schedule 7A – likely to take to same Bill **outside competence.***
- *The single exception for the subject matter of the 2014 Act makes this more likely – implying that whilst agricultural wages, holidays and training are within competence, these will be reserved in other sectors.*

The Committee is greatly concerned as to why competence is being reduced in relation to legislating on ‘silent subjects’ such as Employment provided they ‘relate to’ a ‘conferred subject’ under Schedule 7 of GOWA.

7.0 Section H3 – Job search and support

7.1 Reservation 141 ‘Arrangements for assisting persons to select, train for, obtain and retain employment and to obtain suitable employees’ potentially narrows the Assembly competence on economic development under Schedule 7



GOWA. The Explanatory notes of the Bill explains ‘that the intention behind the reservation is to reserve legislative competence in relation to all work-related programmes for disabled persons’. Despite the explanation the wording potentially narrows the assembly competence under ‘economic regeneration and development’ under Schedule 7 GOWA.

The Committee is concerned with the potential reduction in competence in relation to reservation 141.

8.0 Particular areas of uncertainty in relation to Welsh Minister executive powers

8.1 Devolution of the Wales and Borders Franchise and transfer of the executive functions of the Welsh Ministers is not dealt with in the Bill.

8.2 The St David’s Day announcement and paragraph 2.5.10 of Powers for a Purpose document stated:

8.3 *‘The UK Government is devolving executive franchising functions to the Welsh Government, to enable them to lead on the procurement and management of the next Wales and Borders franchise.’*

8.4 In a written statement on 12 July 2016, the Cabinet Secretary announced, ‘that from early 2017, responsibility for rail franchising will be transferred from the Secretary of State to the Welsh Ministers’.

The Committee would also welcome clarification from the UK Government on the timescales it is working towards, in devolving executive functions to the Welsh Ministers in respect of the Wales and Borders Franchise, given that this is not provided for within the Bill.

8.5 Further, the Welsh Government has previously requested that a change be made to the Railways Act 1993 that would allow public sector bodies to bid for franchise contracts. This would mirror the position for Scotland where provision is provided for in relation clause 49 of the Scotland Bill ‘Rail:



franchising of passenger services'. Similarly, provision has not been made in the Bill.

8.6 In discussing the implications of the Smith Commission for Wales, the St David's Day announcement said analysis of "relevant Smith recommendations in the Welsh context" would be undertaken "to enable decisions to be taken early in the next Parliament on which might be implemented for Wales".

8.7 Department for Transport officials told the former E&B Committee in September 2015 that the issue was being actively considered: *"the UK Government agreed to consider which non-fiscal parts of the Smith Commission agreement, including that commitment, might be implemented for Wales. That consideration is on-going, and further discussions with the Welsh Government will take place shortly in the context of preparing the Wales Bill"*.

The Committee is concerned that in relation to the St David's Day announcement and the discussion of the implications of the Smith Commission for Wales, particularly in relation to the amending of the Railways Act 1993 (that would allow public sector bodies to bid for franchise contracts) is not a feature of the Wales Bill.

